



## An analytical study on the protection and conservation of environment under Indian constitution

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### Abstract

The Constitution is referred to as the "fundamental law of the land," from which all other laws gain their moral authority or legitimacy. Therefore, it must be a living, evolving law that can deal with emerging events and developments. Natural environment protection has not only been elevated to the status of fundamental law of the land, but it has also been woven with the human rights approach and is currently to properly built fact that is the fundamental human rights of all Individual, to inhabit in a free polluted environment with an overall human dignity. The preamble to the Indian Constitution guarantees a socialist society that promote natural environmental protection. The Indian Constitution's preamble guarantees a socialist society that promotes environmental protection. Again, protecting the environment is one of the fundamental duties that every citizen must fulfil. The directive principles are also focused on ensuring the welfare of the Nation. Part III protects the fundamental rights for the development of the persons. If a business activity poses a health risk to society or the broader public, it is illegal for an Indian citizen to engage in it. This paper detail analyzes the various provisions of the Constitution that deal with environmental protection. This paper also examines how Article 21 of the Indian Constitution provides a person with an inherent guarantee of the right to live in human dignity and how it includes the right to an environmentally friendly environment. This paper is concluded with talking about remedies available under Article 226 and 36 constitution for environmental protection.

**Keywords:** Indian constitution, environmental protection, fundamental rights, directive principle, Article 21 of Indian constitution

### Introduction

The life of existence on this planet depends upon at the harmonious courting among surroundings and surroundings. Especially homo-sapiens have very near interplay with nature. The interaction between humans and nature is very close. Humans are at the centre of discussions about sustainable development because they have a right to a healthy and fulfilling life in harmony with the natural world. It's interesting to consider how the Earth's natural riches had lain dormant for millions of years. However, since the beginning of the industrial revolution, enormous quantities of these resources had been exploited in a matter of just a few hundreds of years at unimaginable rates, with all the waste from this exploitation going straight in the environment (air, water, and land) and seriously impairing its natural processes. Pollution has been known to exist for a very long time—at least since humans first used fire thousands of years ago—but it wasn't until the advent of the industrial revolution in the 19th century that it began to reach really global proportions. The ecosystem and all living things are under severe threat from the rapid rise in air, water, and other types of pollution, global warming, and deforestation. The health of all living things, including people, plants, and animals, is negatively impacted by the degradation of the environment caused by a variety of human activities. The idea of environmental protection has been accorded fundamental significance because a healthy environment is necessary to support human health and because everyone has a right to a healthy environment. Every individual's health is protected by environmental preservation, and a healthy person encourages environmental growth, which is urgently needed. To live in an environment which provides a pollution free atmosphere

is not only a basic human right but also uphold human dignity. Principle of sustainable development is one such approach which if followed can fulfil the basic human right of having a life of dignity.

### Obligation of state and environmental protection

Article 39(b) of the constitution of India provides "*that the state shall direct its policy to see that the ownership and control of the material resources of the community are so distributed as to sub serve the common good*". The expression of material resources of the community has been held to include such resources in the hand of the private persons and not only those, which have already vested in the state. The authorities are under the duty to follow the law and regularize the conduct for the benefit of the people who have elected them. Article 47 imposes an obligation on the state that it shall regard the raising level of nutrition and standard of living of its people. Also, the primary duty of the state shall be to improve public health. The state has a duty to forbid the use of alcohol and narcotics that can be harmful to the health of living things and seriously endanger their lives, except from for medical reasons. The word "responsibility" can be understood to mean that the state must adopt the necessary, suitable, and effective measures to raise everyone's standard of living, their health, and their understanding of environmental protection. Development initiatives cannot be undertaken by individuals since doing so would be detrimental to society as a whole. Therefore, the state must maintain a strict check on these programmes and activities.

The supreme court in the case of *municipal council Ratlam vs vardhichand*, held that "*the state will realize that article 47 makes it a paramount principle of governance that steps*

*are taken for the improvement of public health as amongst its primary duties”*

The Indian constitution was amended in the year 1976. With this modification, Article 48-A was added to the constitution with the intention of providing greater provisions for the preservation and protection of the environment. According to the clause in this article, the state has a responsibility to safeguard the nation's forests and wildlife as well as to maintain and improve the environment. In this article, various definitions of the word "Environment" have been used. In addition to acting as a protector, the state must also take the necessary steps to improve the environment.

The madras court in the case of *M.K janardhanam vs district collector, Tiruvallur*, held that “the phrase used in Article 48A & 51A is protect and improve which implies that the phrase appears to contemplate affirmative governmental action to improve the quality of environmental and not just to preserve environment in its degraded form.

Under Article 49 state is required “to protect every monument or place or object of artistic or historic interests, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.” Article 37 provides that the state should strive to “foster respect for the international law treaty obligations” Most important of all articles Article 37 declares that the directive principle contained in PART IV of the Indian constitution are “fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.” In all the above articles, the expression 'State' is used and one should understand the meaning of the word 'State. The Indian Constitution's framers decided to use the same definition of the term "State" as stated in Article 12 for the purposes of Part IV of the Constitution as well. This was done to give the judiciary the ability to interpret it broadly and include all State agencies and instruments within the definition of the term "State." The goal was to instruct all state instrumentalities and agencies to implement the directive principles when enacting laws.

The Supreme Court in *M.C. Mehta v. Union of India* held that "these directive principles (Articles 39 (b), 47 and 48A) individually and collectively impose a duty on the State to create conditions to improve the general health level in the country, and to protect and improve the natural environment.”

The wide interpretation given the Supreme Court to "State" is intended to increase the scope and amplitude of fundamental rights and directive principles of state policy. As a result, fulfilling the requirements outlined in Part IV of the Indian Constitution has now become a fundamental responsibility for all "authorities" falling under the ambit of Article 12. In order to fulfil their fundamental obligations the Union and State legislatures have passed a various laws aimed at preserving and enhancing the natural environment, as well as preserving forests and wildlife. The Executive, both the Union and the State, have created sufficient number of rules to successfully implement the laws passed by the legislatures to maintain and enhance the natural environment as well as to safeguard forests and wildlife in order to fulfil their constitutional obligations. In order to uphold its constitutional duties, the judiciary was and continues to be prepared to issue "appropriate" orders,

"directions," and "writs" against individuals responsible for ecological imbalance and pollution.

In *Rural Litigation and Entitlement Kendra v. State of U.P.*, the Supreme Court ruled that some lime stone quarries should be shut down because they cause significant pollution and negatively affect the safety and health of local residents. In a related decision, the Supreme Court in *M.C. Mehta v. Union of India*, ordered a company that manufactures dangerous and deadly chemicals and gases that endangers the health and lives of its employees and residents of the neighborhood to take all necessary safety precautions before reopening the plant.

In the *Delhi industries pollution case*, the Supreme Court ordered for the relocating of 168 hazardous industries operating in Delhi as they were causing danger to the ecology. The Supreme Court of India ruled in *S. Jagannath v. Union of India* that the construction of shrimp culture farms in restricted regions and environmentally vulnerable coastal areas has a negative impact on the environment, coastal ecology, and economics and cannot therefore be allowed to operate.

The judiciary has made several contributions to safeguarding forests and wildlife, protecting and enhancing the environment, and more than what has been mentioned above.

#### **Obligation of the citizen and environmental protection.**

The obligation of the state in protecting the environment are basically the rights of the citizens. Rights and obligations are two concepts that go hand in hand. These concepts are interlinked. If citizens have the right to a reasonable quality of living and a clean environment, they also have a responsibility to preserve it by abstaining from actions that endanger both human society as a whole and all other forms of life. Prior to the 42nd amendment to the constitution, the idea of rights was much more common than the idea of duties. The supreme law of the land gave more importance to rights than to duties. However, the framers of the constitution believed that both the state and its citizens must share responsibility for environmental protection. Additionally, people began to overlook their obligations in favour of their rights. Consequently, The Constitution (Forty Second) Amendment Act, 1976 inserted part IV-A. Fundamental Duties are covered in Part IV-A of the constitution. Article 51-A (g) expressly addresses the fundamental duty of citizens to preserve and enhance the natural environment, which includes forests, rivers, lakes, wildlife, and to have compassion for all living things. Like the state, it is the responsibility of every citizen to not only protect the environment but also to take action that will help to enhance it. Nature has endowed us with resources and a pollution-free environment, and as such, it is the responsibility of the people to preserve these resources for future generations. In order to maintain the environment through the sustainable use of natural resources, the intergenerational equity principle is extremely important.

In *Vijay Singh Puniya v. State of Rajasthan*, the Rajasthan High Court made the following observation: "any person who disturbs the ecological balance or degrades, pollutes and tinkers with the gifts of the nature such as air, water, river, sea and other elements of the nature, he not only violates the fundamental right guaranteed under Article 21 of the Constitution but also breaches the fundamental duty to protect environment under-Article 5-1A (g)." This

statement was made in a writ petition filed against dyeing and printing units, who were releasing effluents and contaminating the water sources needed for drinking and agriculture.

In the case of *L.K. Koolwal v. State of Rajasthan and Others*, the municipal municipality of Jaipur was neglected to carry its fundamental obligation of upholding the state's hygienic standards. As a result, residents were put in danger and the situation led to an urgent sanitary problem. In order to draw attention to the municipality's egregious incompetence, Mr. Koolwal and other residents filed an application before the high court under article 226 of the Indian constitution. In defining the true extent of Article 51-A in this instance, the court explained that it was intended to give citizens the legal right to petition the court to have governmental operations scrutinised to see whether they were being carried out or not in conformity with the country's fundamental laws. Citizens have the right to file a court case in order to ensure that the state is carrying out its obligations and that its respective departments, municipal bodies, etc. are properly enforced. Neglecting to maintain hygiene and sanitation standards poisons the environment as a whole and slowly impacts the lives of living things. This violates the citizen's fundamental right to life, guaranteed by article 21 of the constitution, which also includes the right to a decent standard of living and a clean and safe environment. As a result, it is justified for citizens to protect their fundamental right to life from being violated. As a result, the court ordered the municipality to remove all of the filthy material that was endangering the lives and health of the people.

In *M. K. Janardhanam v. District Collector, Tiruvallur* the Madras High Court appreciated the petitioner for the efforts taken by him. "Under Article 51A(g) it is the fundamental duty of every one of the citizens of this country to protect and improve the natural environment including forests, lakes, rivers, all other water resources and wild life and to have compassion for living creatures. The petitioner should be complimented for discharging his constitutional obligation by bringing to the notice of this Court at the risk of his personal safety the unimaginable aggression on natural resources by unscrupulous element."

In another case, *Goa Foundation v. the State of Goa*, the petitioner was a society registered under the rules relating to the registration of societies, and its members were Indian citizens who had a fundamental duty to safeguard and improve the environment, lakes, forests, rivers, and have compassion for living creatures as stipulated by article 51-A. The question was whether the society had locus standi to move to the court or not was raised before the court. The court answered this question in a strong affirmative, holding that society had the same fundamental duty. The petitioner was determined to have locus standi to petition the court to not only stop ecological deterioration but also to create and carry out policies aimed at repairing the environment and preserving ecological balance.

### **Fundamental rights and environmental protection**

The core of Principle 1 of the Stockholm Declaration is reflected in our constitution's Articles 14, 19, and 21, which, respectively, address the right to equality, the freedom of speech, and the right to life and personal liberty. The permanent people's tribunal views the anti-humanitarian impacts of industrial and environmental dangers not as an

inevitable component of the current industrial system but rather as a pervasive and deliberate violation of the most fundamental human rights. Most important among these are the right to life, health, expression, association and access to justice. Part III of the Indian Constitution, which addresses fundamental rights, contains all of these rights. A constitutional provision is never static; rather, it is constantly changing and evolving. As a result, it never Admit of a narrow, pedantic, or syllogistic approach. The purpose of fundamental rights is to benefit successive generations. The provisions of part III and part IV dealing with fundamental rights and directive principles respectively are supplementary and complementary to each other. Part III of the Constitution has a number of essential rights that are not listed, and judicial activism in India has played a significant role in interpreting these rights. One of them is environmental protection. The judiciary has construed many elements of Part III, which deals with fundamental rights, to include the right to live in a healthy environment even if specific provisions are only provided in the section dealing with Directive Principles and Fundamental Duties. Thus, the judiciary in India has provided impetus to the Human Rights approach for the protection of the environment.

### **Right to live in a clean and healthy environment in India**

In India the higher judiciary has interpreted the existing constitutional provisions *Viz.*, "the right to life" guaranteed in Article 21 to mean and include the right to live in a healthy environment. Right to life includes the right to have a dignified life and also the bare necessities of life like food, shelter, clean water and clothes. The right to life includes the ability to live in a decent and safe environment free from danger to one's life. An environment must be free from all viruses and diseases. Thus, the court have intervened by writs, orders, and directions in appropriate cases and recognized the constitutional right to a healthy environment. This aspect of Article 21 has clearly been discussed in the case of *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh*, in which the petitioner and other citizens wrote to the supreme court to express their opposition to the progressive mining that stripped the Mussoorie hills of their trees and forests and caused soil erosion. Landslides and the obstructing of subsurface water routes were caused as a result, which had a negative impact on the ecosystem. The Hon'ble Supreme Court instructed the registrar to treat this letter as a writ submitted in accordance with Article 32 of the Constitution. The Supreme Court appointed an expert team to assist the Honorable court with some technical matters in this regard. Based on the expert committee report the court ordered the closure of the limestone quarries because it was violating the right to life and the right to personal liberty, Quarrying operations cause ecological deterioration, as well as air and water pollution, which significantly impacts people's quality of life.

In *Subash Kumar vs state of Bihar*, the supreme court observed that "Right to live is a fundamental right under Art 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art.32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life".

In *Virandar Gaur vs state of Haryana*, the supreme court after receiving, reaffirming and applying the principle 1 of Stockholm declaration held that “*Article 21 protect the right to life as a fundamental right. Enjoyment of the life and its ambit including their right to life with human dignity encompasses within it ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can't be enjoyed. Any contra acts or actions would causes environmental pollution. Environmental ecological, air, water, pollution etc. Should be regarded as amounting to violation of Article 21. Therefore hygiene environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without humane and healthy environment.*”

In *Vellore Citizens' Welfare Forum v. Union of India* the supreme court held that “*The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. Our legal system having been founded on the British common Law, the right of the person to pollution free environment is a part of basic jurisprudence of the land*”

The supreme court in *T.N Godavarman Thirumalpad vs union of india*, held that the right o life guaranteed in Article 21 of the constitution of India includes a right to an environment adequate for health and well being. In this case it was alleged that the mining activity adversely affecting the flora and fauna in and around Kudremukh National park, a part of west ghats.

In *state of MP vs Kedia leather & liquor Ltd* the apex court held that ‘*Environmental, ecological air and water pollution amount to violation of right to life assured by Article 21 of the Constitution of India. Hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment.*’

In *Narmada Bachao Andolan vs Union of India And Others* the Supreme court held that “*Water is the basic need for the survival of human beings and is part of right of life and human rights as enshrined in Article 21 of the Constitution of India... It is a matter of great concern that even after half a century of freedom, water is not available to all citizens even for their basic drinking necessity violating the human right resolution of U.N.O. and Article 21 of the Constitution of India*”

### **Right to freedom and expression**

Article 19(1)(a) of Part III of the Constitution specifically mention the right to free speech and expression as a fundamental right. In Majority of the cases have come before the court as Public Interest Litigation or PIL in which the people exercised their freedom of speech and expression by writing letters to the court or otherwise by filing petitions before it, highlighting the violation of the rights of the people to live in a healthy environment in one way or the other. In India, the media has been a significant factor in shaping how the public views environmental issues. As a result, Article 19(1)(a) is seen as covering press freedom as well.

### **Right to Equality**

The Right to Equality in the Indian Constitution is provided under Article 14. Article 14 cannot be violated since this

fundamental right implicitly imposes an obligation on the state to exercise fairness in its environmental protection measures. The judiciary has taken a hard stand against arbitrary sanctions where state authorities have used their powers arbitrarily. Use of discretionary powers without measuring the interest of the public violates the fundamental right of equality of the people.

In *Bangalore Medical Trust v. B.S. Muddappa*, the City Improvement Board of Bangalore created an improvement plan with the intention of enlarging the city. A portion of the land was preserved as part of this plan in order to build a low-level park. However, the chief minister ordered that the area reserved for the low-level park be transformed into the municipal amenity site where the hospital would be built. As soon as the construction began, the residents moved to the high court. The residents' petition was allowed by the high court. But in a supreme court appeal, the appellants argued that the ability to assign sites is entirely discretionary and that the developing authority has the right to approve the site for a hospital rather than a park. And thus, the diverted use of the land was justified in the eyes of the appellants. The supreme court denied the appeal by highlighting the value of parks and open spaces in the growth of metropolitan areas. The honourable court went on to say that open spaces, recreation, playgrounds, and ecological conservation are issues that are extremely important for the growth of society as a whole. It is warranted to keep open spaces for the benefit of the public, thus they cannot be sold or leased to a private party purely for financial advantage.

### **Freedom to Carry on Trade or Business**

According to Article 19 (1)(g) of the Constitution, every Indian citizen has a basic right to practise any profession, business, trade, or commerce at any location in Indian territory. However, as this is not a absolute right, there are certain fair limitations. This fundamental right to avoid environmental hazards is subject to a reasonable restriction as set forth in Article 19(6) of the Constitution. In order to engage in any profession, trade, business, or occupation, it is important to prevent ecological imbalance and atmospheric deterioration. As a result, it is forbidden to destroy the environment in the name of a business or profession.

In *MC Mehta v Union of India* the petition filed was against leather tanneries, which were polluting the holy river ganga by letting the effluents into the river. In those case the court held that the pollution of river ganga affecting the life and health of the people and also ecology of the Indo –gangetic plain. In this case the court issued directions to the tanneries to set up effluent treatment plants within 6 months, failing which the court held that the tanneries would be closed. It concluded that although the closure of tanneries might result unemployment and loss of revenue, life, health and ecology had greater importance.

In *Delhi industry pollution* case the supreme court ordered for the shifting of 168 hazardous industries operating in Delhi as they were causing danger to the ecology.

In *S. Jagannath v. Union of India*, the supreme court has held that the setting up of shrimp culture farms within the prohibited areas and in ecologically fragile coastal areas have adverse effect on the environment, coastal ecology and economics and hence, they can't permitted to operate.

### Judicial remedies for environmental protection under Indian constitution

The supreme court and high court of India have consistently held that “*right o live in a clean and healthy environment*” is a fundamental guaranteed by article 21 of the Indian constitution. Remedies for enforcement of fundamental “right to live in a clean and healthy environment” are provided under article 32 and 226 of the constitution of India. Under these provisions the Supreme Court and High Courts have the power to issue any direction or orders or writs in the nature of Habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever is appropriate. Environmental law is often governed by specific statutes, however in India, the jurisprudence of environmental law has mostly been shaped through writ jurisdiction. As a result of judicial activism and the idea of Public Interest Litigation under writ jurisdiction, the procedural jurisdiction has changed, and it has been crucial in the development and encouragement of environmental jurisprudence from a Human Rights perspective. This remedy is chosen over tort actions or public nuisances because it is more expeditious, less expensive, and provides a direct route to the higher judiciary, lowering the likelihood of subsequent appeals. The relaxed rules of locus standi and evolution and recognition of epistolary jurisdiction by the Supreme Court and High Courts has further ensured the public participation in matters like environment protection. The remedy under writ jurisdiction also provide flexibility to the court to choose an appropriate relief by issuing appropriate orders, directions or writes. Thus, the higher judiciary inter alia had ordered the municipalities to construct proper drainage system for maintenance of health and preservation of the sanitation and environment. It give clearance to noxious factories to restart on technical reports of safety means. The court has removed industries from residential areas. The court had appointed special panel to assess the availability of technology for controlling vehicular pollution. The court has shifted the stone crushing units outside urban cities. The court also ordered for rehabilitation of slum dwellers and prescribed hawking zones in metropolitan cities.

In *Tarun Bharat Sangh, Alwar v. Union of India & Ors* the apex court directed the state government in particular, police administration to provide police protection to environmental activist against any physical threat by the vested interests and to ensure that none of the activist and workers of the petitioner are subjected to any intimidation and hindrance in their activity. The court also encouraged the environmentalist by awarding rewards and discouraged the access to Write jurisdiction for satisfying personal grudge or rivalry. The judiciary has been very cautious in its approach. It has reduced to interference on imaginary apprehensions of environment pollutions, and in those cases where the government has arrived a decision after considering relevant facts and application its mind without any extraneous considerations. However the court always issued directions for strict complains with environment (protection)Act, 1986. The court has been ensuring the compliance of its orders by granting costs against the parties for non-compliance. A number of times the court has appointed monitoring committees to see that courts orders are duly complied with. The court also used the affidavits, commissions, panel of experts and took judicial notice for ascertaining the factual matrix.

### Green Bench

The supreme court in *Vellore Citizens Welfare Forum vs. Union Of India & Ors* observed that high Court would be in a better position to deal with environmental issues pertaining to the religion over which it exercise jurisdiction and directed the registry of the supreme court to send the records to the high court of madras, Bombay, calcutta, respectively and requested the Chief justice of respective high courts to constitute a “Green bench” for the purpose of adjudicating public interest environmental cases.

The supreme court had made clear that it would open to green bench to pass any appropriate orders keeping in view the directions issued by the supreme court in the aforesaid cases. SC had directed the registry of the supreme court to send the records to the high court. and observed that thet high court should treat this matter as a petition under article 226 of the constitution of India, and deal with accordance with law and also terms of the directions issued by us. The Supreme Court also gave liberty to the parties to approach high court as and when necessary.

### Conclusion

In earlier times the term "environment" was not specifically mentioned in the Constitution and there were no provisions in place to address environmental hazards and control human behaviour that was significantly contributing to the degradation of the environment while purporting to be exercising fundamental rights. The supreme law of the land is the constitution. Therefore, including clauses that particularly address environmental issues might prove advantageous for the environment. 42nd Amendment to the Indian Constitution proved to be a solution for this major health hazard. The provisions in the paper begin with highlighting the provisions from the base. Starting from the words democratic, socialist and republic used in the Preamble to the Constitution and its connection with the protection of the environment. Followed by duties of the state to protect the environment as being an authority elected by the people they are obliged to work for the people. Then the concept of rights and duties has been dealt with, wherein the right of a citizen to have a healthy environment has been mentioned and also the duties of citizens towards the environment in which they live to.

The constitutional provisions and associated cases are discussed in this study. It demonstrates the role of the Supreme Court and the High Courts. In the recent decade, the courts shown their legal scholarship in the development of environmental jurisprudence. The role of the higher judiciary has also seen significant changes. The Court has done its job, accomplished its task, and fulfilled its duty. It is our contention that the judiciary is not the only effective means of resolving environmental issues, which can be efficiently solved only through public knowledge and political will, rather than judicial will. Environmental concerns are complicated, thus it is necessary to focus on their technical and scientific aspects. In such circumstances, the Courts find it challenging to establish their own independent opinion and turn to the assistance of expert committees, which is a laborious and time-consuming process. As a result, it is crucial that both the State and the general public pay attention to environmental degradation and take the necessary actions to stop it.

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